

SENATE BILL 2482
By Burks

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4, relative to controlled substances, ingredients for controlled substances, drugs, drug paraphernalia and the penalties for certain violations thereof.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

39-17-4__.

A violation of § 39-17-417 that involves a substance listed in § 39-17-408(d)(2) shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation if any one (1) of the following conditions is met:

- (1) Firearm found on the premises;
- (2) Possession, transportation, or disposal of materials involved in the manufacture of an illegal controlled substance that created a substantial risk to human health or safety or a danger to the environment;
- (3) A person under the age of thirteen (13) was present during the manufacturing process; or
- (4) The manufacturing of an illegal controlled substance was to take place or did take place within five hundred feet (500') of a residence, place of business, church, or school.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

39-17-4__.

(a) It is an offense for a person to possess, whether acquired through theft or other means, any substance, with the intent to:

(1) Use such substance in the manufacture of a Schedule I or Schedule II controlled substance; or

(2) To knowingly convey such substance to another for use in the manufacture of a Schedule I or Schedule II controlled substance.

(b) In determining whether a particular substance is possessed with the intent required to violate subsections (a)(1) and (2) of this section, the court or other authority making such a determination shall, in addition to all other logically relevant factors, consider the following:

(1) Statements by the owner or anyone in control of the substances concerning its use;

(2) Prior convictions, if any, of the owner or of anyone in control of the substance for violation of any state or federal law relating to the sale or manufacture of controlled substances;

(3) Instructions or descriptive materials of any kind accompanying the substance or found in the owner or controlling person's possession concerning, explaining, or depicting its use;

(4) The manner in which the substance is displayed or offered for sale;

(5) The quantity and location of the substance considered in relation to the existence and scope of legitimate uses for the substances in the community; and

(6) Expert testimony concerning the substance's use.

(c) This section shall not apply where possession was by a person authorized by this part and title 53, chapter 11, parts 3 and 4 to dispense, prescribe, manufacture, or possess the controlled substance in question.

(d) Violation of this section is a Class E felony.

SECTION 3. Tennessee Code Annotated, Section 39-17-431, is amended by adding the following language as a new, appropriately designated subsection:

(e)

(1) It is an offense for any person to possess ephedrine, its salts, optical isomers and salts of optical isomers or pseudoephedrine, its salts, optical isomers and salts of optical isomers with the intent to manufacture amphetamine, methamphetamine, or any of their analogs.

(2) Notwithstanding the provisions of subsection (d) to the contrary, a violation of this subsection is a Class D felony.

SECTION 4. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as an appropriately numbered new section:

Section 39-17-4__.

(a) A person commits the offense of criminal exposure to drug trafficking who manufactures, delivers, or sells a Schedule I or Schedule II controlled substance, if at the time of the offense, such person was accompanied by a child under thirteen (13) years of age.

(b) Criminal exposure to drug trafficking is a Class D felony.

SECTION 5. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new section:

Section 39-17-4__.

(a) In the prosecution of a person for a violation of this part involving the manufacture of amphetamine or methamphetamine, possession of more than five (5) grams of ephedrine, its salts, optical isomers or salts of optical isomers, or more than nine (9) grams of pseudoephedrine, its salts, optical isomers or salts of optical isomers, in combination with two (2) or more objects constituting drug paraphernalia that are used to manufacture, compound, produce, prepare, test, or analyze amphetamine or methamphetamine or any of their analogues, is prima facie evidence that such person intended to manufacture amphetamine or methamphetamine or any of their analogues.

(b) This section shall not apply if possession was by a person authorized by this part and title 53, chapter 11, parts 3 and 4, to dispense, prescribe, manufacture, or possess the controlled substance in question.

SECTION 6. Tennessee Code Annotated, Section 39-17-425, is amended by adding the following as subsection (c) and by relettering the subsequent subsections accordingly:

(c)

(1) Except when used or possessed by a person authorized by this part and title 53, chapter 11, parts 3 and 4 to dispense, prescribe, manufacture, or possess the controlled substance in question, it is an offense for any person to use, or possess with the intent to use, two (2) or more objects that constitute drug paraphernalia in combination with each other to manufacture, compound, produce, prepare, test, or analyze amphetamine or methamphetamine or any of their analogues.

(2)

(A) A violation of subdivision (c)(1) is a Class D felony.

(B) A violation of subdivision (c)(1) is a Class C felony if the violation occurs on property open to the public for lodging.

SECTION 7. This act shall take effect July 1, 2004, the public welfare requiring it